

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

A&L INDUSTRIES, INC.,

Plaintiff,

V.

CDM TECHNICAL TRAINING
INSTITUTE, INC. et al.,

Defendants.

CLOSED

Civil Action No. 10-3636 (PGS)

ORDER


This matter comes before the Court on a Report and Recommendation filed by Magistrate Judge Esther Salas on February 3, 2011, recommending that this Court grant Plaintiff A & L Industries, Inc.'s ("Plaintiff's") motion to remand and deny Plaintiff's request for costs and attorney's fees. The parties were given notice that pursuant to Local Civil Rule 72.1, they had fourteen days from receipt of the Report and Recommendation to file and serve any objections. Defendants CDM Technical Training Institute, Inc., Mark Miller, and Gary Miller (collectively "Defendants"), filed objections to the Report and Recommendation on February 17, 2011.

The Court has reviewed the Report and Recommendation *de novo* and has considered Defendants' objections to the Report and Recommendation. Despite the decision in *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005), and Justice, then-Judge Alito's dissent in *ErieNet, Inc v. Velocity Net, Inc.*, 156 F.3d 513, 519 (3d Cir. 1998), following precedent is essential. Accordingly, the Court concurs in Magistrate Salas's opinion and will adopt the Report and Recommendation as the Opinion of the Court.¹

¹ The Court observes that the instant action was removed pursuant to 28 U.S.C. § 1441, and neither party advanced jurisdiction under the Class Action Fairness Act (CAFA), 28 U.S.C. § § 1332(d), 1453, 1711-15. Even under CAFA, jurisdiction would not obtain for at least two reasons: (1) there is no diversity between the parties, 28 U.S.C. § 1332(d)(2); and (2) Plaintiff's

IT IS on this 14th day of March, 2011, **ORDERED** as follows:

1. The Report and Recommendation of Magistrate Judge Esther Salas (ECF No. 16.) is hereby adopted as the Opinion of the Court.
2. Plaintiff's motion to remand is granted. The case is hereby remanded to the New Jersey Superior Court, Essex County.
3. Plaintiff's request for costs and attorney's fees is denied.



PETER G. SHERIDAN, U.S.D.J.

March 14, 2011

Complaint requests that Defendants be charged \$500 for each violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227; thus, Plaintiffs would need to establish 10,000 TCPA violations to meet CAFA's \$5 million requirement, which is a remote possibility under the facts alleged in the Complaint.